

Service Date: May 25, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF The PSC's Investigation) UTILITY DIVISION
of the Regulatory Status of Other Common) DOCKET NO. 94.2.8
Carriers and Contemplated Rulemaking.) ORDER NO. 5778b

PHASE I FINAL ORDER

Procedural Background

1. This Docket was initiated by the Montana Public Service Commission (Commission) by the issuance of a "Notice of Investigation and Contemplated Rulemaking, and Intervention Deadline" on March 9, 1994. A Protective Order, Order No. 5778, and a Procedural Order, Order No. 577Ba, were also issued on March 9, 1994.
2. The Staff Questionnaire contemplated by the Notice and Procedural Order, was served on all parties on March 18, 1994. The Commission received responses to the Staff Questionnaire from the following Respondent parties: Oncor Communications, Inc. (aka International Telecharge, Inc. - ITI), American Network Exchange, Inc. (AMNEX), West Coast Telecommunications, Inc. (WCI), Cable ~ Wireless, Inc., One-2-One Communications, ITC Tele-services, Inc.(ITC), Northwest Telecommunications, Inc., LDDS Communications, Inc. (aka Dial-Net), Wiltel, Inc., Intermountain Digital Network, Inc. (IDN), and the Montana Department of Administration, Information Services Division (DOA-ISD). Letters were received from Advantis, a partnership, and DeltaCom, Inc. Motions to Dismiss were also filed by IDN, AMNEX, DOA-ISD, LDDS, and One-2-One Communications. No filing has been received from Long Distance USA, Gem State/Pacific NW Telcom, Western Telecommunications (WTCI), Dial One Communications, Access Long Distance, Econo-Call, Long Distance Services, or Tel America. See Notice of Commission Action, served May 2, 1994.
3. AT&T Communications and TRI Touch America filed Reply Comments, pursuant to the Procedural Order, on May 4, 1994 and May 2, 1994, respectively. DOA-ISD filed a subsequent Response on May 5, 1994.
4. The Commission held a work session at its offices in Helena on May 9, 1994 to discuss the answers filed to the Staff Questionnaire, and to consider the Motions to Dismiss.
5. On April 4, 1994 Advantis, a partnership, submitted a letter to the Commission stating that it exclusively provides interstate data communications services in Montana. Advantis later submitted a notarized copy of its April 4th letter. The Commission has jurisdiction over interstate services or data services. See § 59-3-803(3), MCA. Therefore, based on the fact that Advantis only provides interstate data transmission at the present time in Montana, the Commission finds sufficient reason to dismiss it as a Respondent party herein.

6. DeltaCom, Inc. filed a letter with the Commission on April 11, 1994. According to the letter, DeltaCom does not currently provide any intrastate telecommunications services in Montana. Based upon the latest information provided to the Commission from US West Communications, GTE-Northwest, Blackfoot Telephone Cooperative, and PTI Communications, DeltaCom does not currently purchase switched access service from those local exchange companies in Montana. Accordingly, the Commission finds sufficient cause to dismiss DeltaCom as a Respondent party, since it does not provide intrastate regulated telecommunications services.

7. TRI Touch America (a subsidiary of Montana Power Company) filed answers to the Staff Questionnaire and a Motion to Dismiss, on behalf of Intermountain Digital Network., Inc. (IDN). IDN, the corporate entity, was merged into TRI Touch America on April 10, 1992. TRI Touch America is currently regulated, and has approved tariffs on file with the Commission, pursuant to ARM 38.5.3701 et seq. Since IDN no longer exists as a corporation, it is dismissed.

8. Northwest Telecommunications, Inc. filed answers to the Staff Questionnaire, stating that it does not conduct any intrastate telecommunications business in Montana, but only purchases terminating access to complete interstate calls. Since Northwest does not provide any intrastate telecommunications services, it is dismissed.

9. If Advantis, DeltaCom, or Northwest Telecommunications expand or alter the nature or extent of their telecommunications services provided in Montana, they may then fall within Commission jurisdiction and would have to comply with applicable statutes and Commission rules before they could lawfully provide service. See e.g. § 69-3-805, MCA, ARM 38.5.2704 and ARM 38.5.3701 et seq.

10. The Montana Department of Administration, Information Services Division (DOA-ISD) filed answers to the Staff Questionnaire on April 12, 1994. It simultaneously filed a Motion to Dismiss, which discussed a number of issues unique to DOA-ISD, due to their status as a state agency. These issues are also addressed in more detail in TRI Touch America's Reply Comments, and DOA-ISD's May 6th Response. Many of the issues raised by the comments with respect to DOA-ISD's telecommunications services and regulatory status are not present with respect to any of the other parties in this Docket. Its status as an agency of Montana state government presents a number of unique issues which deserve careful attention and consideration, but are more appropriately addressed in a separate proceeding. The Commission dismissed DOA-ISD from Docket: No. 94.~8, into a new separate Docket. The new Docket will include all intervenors from Docket No. 94.2.8, and the same service list. However, it will initially proceed informally, through a staff investigation. The Commission will consider further action at a later date, with respect to appropriate procedures for the new Docket. The decision to dismiss DOA-ISD into a separate Docket is a procedural step only, so that the issues raised by the services it provides and its status, may be addressed separately from Docket No. 94.2.8. The Commission has reached no substantive conclusion, nor does it express any opinion herein, regarding the legal, policy and regulatory issues raised with respect to DOA-ISD.

CONCLUSIONS OF LAW

The provision of two-way switched voice-grade telecommunications originating and terminating in the State constitutes "regulated telecommunications services" subject to the regulatory jurisdiction of the Montana Public Service Commission. §§ 69-3101 and 69-3-8C3, MCA. The Commission has authority to supervise, regulate and control public utilities. § 69-3-102, MCA.

2. The Commission properly exercises jurisdiction over the provision of "regulated telecommunications services" pursuant to Title 69, Chapter 3, MCA.

3. The PSC has provided adequate public notice of all proceedings herein and an opportunity to be heard, to all interested parties in this Docket. Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

IT IS HEREBY ORDERED BY THE MONTANA PUBLIC SERVICE COMMISSION:

1. The following entities are dismissed as Respondent parties: Northwest Telecommunications, Inc., Advantis, a partnership, DeltaCom, Inc, and Intermountain Digital Network, Inc. (IDN); based upon a finding that they do not currently offer "regulated telecommunications services" in Montana and are therefore not "public utilities" subject to Commission jurisdiction, pursuant to §§ 69-3-803 (3) and 69-3-101, MCA.

2. The Montana Department of Administration, Information Services Division (DOA-ISD), is procedurally dismissed from this Docket, into a new separate proceeding, for further analysis and review. The DOA-ISD may still participate in Phase II of Docket No 94.2.S as an Intervenor, if it chooses to do so.

3. All other Respondent parties listed on Exhibit "A" ~f the Commission's Notice issued March 9, 1994 remain Respondent parties herein, subject to proceedings in Phase II of this Docket, and further orders by the Commission. The Commission defers action on the Motions to Dismiss filed by AMNEX, LDDS and One-2-One, until after the conclusion of Phase II.

4. This Docket will proceed to Phase II pursuant to the schedule set forth in Procedural Order No. 5778a, beginning with direct pre-filed testimony due June 10, 1994.

Done and Dated this 23rd day of May, 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.